

AMENDED IN SENATE MAY 7, 2013
AMENDED IN SENATE APRIL 22, 2013
AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 686

Introduced by Senator Jackson

February 22, 2013

An act to amend Section 11713.18 of, and to add Sections 11713.27 and 11713.28 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 686, as amended, Jackson. Vehicles: vehicle dealers.

Existing law provides that it is a violation of the Vehicle Code for the holder of any dealer's license issued as specified to advertise for sale or sell a used vehicle as "certified" or use any similar descriptive term in the advertisement or the sale of a used vehicle that implies the vehicle has been certified to meet the terms of a used vehicle certification program if any of specified provisions apply, including, but not limited to, the dealer knows or should have known that the vehicle has sustained frame damage, and the dealer disclaims any warranties of merchantability on the vehicle. Under existing law, a violation of these provisions is a crime.

The bill would also prohibit that representation from being made if the dealer knows or should have known that the vehicle is subject to a manufacturer's safety recall, *and the repairs required to correct the defect have not been performed on the vehicle*. By creating a new crime, the bill would impose a state-mandated local program.

Existing law provides that it is unlawful for a lessor-retailer to sell a vehicle without a vehicle dealer license or temporary permit. Existing

law prohibits a licensed dealer from engaging in certain practices, including, among others, making an untrue or misleading statement indicating that a vehicle is equipped with all the factory-installed optional equipment the manufacturer offers. Under existing law, a violation of these provisions is a crime.

This bill would additionally prohibit a dealer from selling, leasing for an initial term of less than 4 months, renting, loaning, or otherwise transferring ownership at retail of a used vehicle, as specified, if the dealer knows or should have known that the vehicle is subject to a manufacturer's safety recall, unless the repairs required to correct the defect have been performed on the vehicle. The bill would additionally prohibit a rental company that is also a dealer from selling or otherwise transferring ownership at retail of a used vehicle, if the rental company knows or should have known that the vehicle is subject to a manufacturer's safety recall, unless the repairs required to correct the defect have been performed on the vehicle. The bill would require a dealer to obtain information about a used vehicle's safety recall status, as specified. By creating a new crime, this bill would impose a state-mandated local program. The bill would also make a violation of these provisions actionable under the Consumers Legal Remedies Act and the Unfair Competition Law, and as false advertising.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11713.18 of the Vehicle Code is amended
- 2 to read:
- 3 11713.18. (a) It is a violation of this code for the holder of
- 4 any dealer's license issued under this article to advertise for sale
- 5 or sell a used vehicle as "certified" or use any similar descriptive
- 6 term in the advertisement or the sale of a used vehicle that implies
- 7 the vehicle has been certified to meet the terms of a used vehicle
- 8 certification program if any of the following apply:

1 (1) The dealer knows or should have known that the odometer
2 on the vehicle does not indicate actual mileage, has been rolled
3 back or otherwise altered to show fewer miles, or replaced with
4 an odometer showing fewer miles than actually driven.

5 (2) The dealer knows or should have known that the vehicle
6 was reacquired by the vehicle's manufacturer or a dealer pursuant
7 to state or federal warranty laws.

8 (3) The title to the vehicle has been inscribed with the notation
9 "Lemon Law Buyback," "manufacturer repurchase," "salvage,"
10 "junk," "nonrepairable," "flood," or similar title designation
11 required by this state or another state.

12 (4) The vehicle has sustained damage in an impact, fire, or flood,
13 that after repair prior to sale substantially impairs the use or safety
14 of the vehicle.

15 (5) The dealer knows or should have known that the vehicle has
16 sustained frame damage.

17 (6) Prior to sale, the dealer fails to provide the buyer with a
18 completed inspection report indicating all the components
19 inspected.

20 (7) The dealer disclaims any warranties of merchantability on
21 the vehicle.

22 (8) The vehicle is sold "AS IS."

23 (9) The term "certified" or any similar descriptive term is used
24 in any manner that is untrue or misleading or that would cause any
25 advertisement to be in violation of subdivision (a) of Section 11713
26 of this code or Section 17200 or 17500 of the Business and
27 Professions Code.

28 (10) The dealer knows or should have known that the vehicle
29 is subject to a manufacturer's safety ~~recall~~ *recall, and the repairs*
30 *required to correct the defect have not been performed on the*
31 *vehicle.*

32 (b) A violation of this section is actionable under the Consumers
33 Legal Remedies Act (Title 1.5 (commencing with Section 1750)
34 of Part 4 of Division 3 of the Civil Code), the Unfair Competition
35 Law (Chapter 5 (commencing with Section 17200) of Part 2 of
36 Division 7 of the Business and Professions Code), Section 17500
37 of the Business and Professions Code, or any other applicable state
38 or federal law. The rights and remedies provided by this section
39 are cumulative and shall not be construed as restricting any right
40 or remedy that is otherwise available.

1 (c) This section does not abrogate or limit any disclosure
2 obligation imposed by any other law.

3 (d) This section does not apply to the advertisement or sale of
4 a used motorcycle or a used off-highway motor vehicle subject to
5 identification under Section 38010.

6 SEC. 2. Section 11713.27 is added to the Vehicle Code, to
7 read:

8 11713.27. (a) Except for a rental company, as defined in
9 Section 1936 of the Civil Code, a dealer issued a license under
10 this article shall not sell, lease for an initial term of less than four
11 months, rent, loan, or otherwise transfer ownership at retail of a
12 used vehicle, as defined in Section 665 and subject to registration
13 under this code, if the dealer knows or should have known that the
14 vehicle is subject to a manufacturer's safety recall, unless the
15 repairs required to correct the defect have been performed on the
16 vehicle.

17 (b) For purposes of this section, a dealer is deemed to have
18 knowledge of a manufacturer's safety recall if either of the
19 following applies:

20 (1) The dealer receives notification from the manufacturer.

21 (2) The dealer is a franchisee of the manufacturer.

22 (c) In the absence of knowledge pursuant to subdivision (b),
23 and until auto manufacturers are required to provide vehicle safety
24 recall data on a publicly accessible Internet Web site pursuant to
25 Section 31301 of Title 49 of the United States Code, a dealer shall
26 obtain information about a vehicle's safety recall status prior to
27 completing a transaction subject to this section from at least one
28 of the following sources of information:

29 (1) The Internet Web site of the manufacturer, provided that the
30 safety recall status of the vehicle is made available by the
31 manufacturer.

32 (2) A toll-free telephone number, provided that the manufacturer
33 has made the safety recall status of the vehicle available at that
34 number.

35 (3) Another dealer that is a franchisee of the manufacturer.

36 (4) A commonly available vehicle history report, provided that
37 the safety recall status of the vehicle is available.

38 (d) When auto manufacturers are required to provide vehicle
39 safety recall data on a publicly accessible Internet Web site
40 pursuant to Section 31301 of Title 49 of the United States Code,

1 a dealer shall obtain information about a used vehicle's safety
2 recall status from that database.

3 (e) A violation of this section is actionable under the Consumers
4 Legal Remedies Act (Title 1.5 (commencing with Section 1750)
5 of Part 4 of Division 3 of the Civil Code), the Unfair Competition
6 Law (Chapter 5 (commencing with Section 17200) of Part 2 of
7 Division 7 of the Business and Professions Code), Section 17500
8 of the Business and Professions Code, and any other applicable
9 state or federal law. The rights and remedies provided by this
10 section are cumulative and shall not be construed as restricting
11 any right or remedy that is otherwise available.

12 SEC. 3. Section 11713.28 is added to the Vehicle Code, to
13 read:

14 11713.28. (a) A rental company, as defined in Section 1936
15 of the Civil Code, that is also a dealer licensed under this article
16 shall not sell or otherwise transfer ownership at ~~retail~~, *retail* of a
17 used vehicle, as defined in Section 665 and subject to registration
18 under this code, if the rental company knows or should have known
19 that the vehicle is subject to a manufacturer's safety recall, unless
20 the repairs required to correct the defect have been performed on
21 the vehicle.

22 (b) For purposes of this section, a rental company is deemed to
23 have knowledge of a manufacturer's safety recall when the rental
24 company receives notification of the manufacturer's safety recall
25 pursuant to subdivision (b) or (c) of Section 30118 or Section
26 30119 of Title 49 of the United States Code.

27 (c) In the absence of knowledge pursuant to subdivision (b) of
28 this section, and until auto manufacturers are required to provide
29 vehicle safety recall data on a publicly accessible Internet Web
30 site pursuant to Section 31301 of Title 49 of the United States
31 Code, a rental company shall obtain information about a vehicle's
32 safety recall status prior to completing a transaction subject to this
33 section from at least one of the following sources of information:

34 (1) The Internet Web site of the manufacturer, provided that the
35 safety recall status of the vehicle is made available by the
36 manufacturer.

37 (2) A toll-free telephone number, provided that the manufacturer
38 has made the safety recall status of the vehicle available at that
39 number.

40 (3) Another dealer that is a franchisee of the manufacturer.

1 (4) A commonly available vehicle history report, provided that
2 the safety recall status of the vehicle is available.

3 (d) When auto manufacturers are required to provide vehicle
4 safety recall data on a publicly accessible Internet Web site
5 pursuant to Section 33101 of Title 49 of the United States Code,
6 rental car companies shall obtain information about a used vehicle's
7 safety recall status from that database.

8 (e) A violation of this section is actionable under the Consumers
9 Legal Remedies Act (Title 1.5 (commencing with Section 1750)
10 of Part 4 of Division 3 of the Civil Code), the Unfair Competition
11 Law (Chapter 5 (commencing with Section 17200) of Part 2 of
12 Division 7 of the Business and Professions Code), Section 17500
13 of the Business and Professions Code, and any other applicable
14 state or federal law. The rights and remedies provided by this
15 section are cumulative and shall not be construed as restricting
16 any right or remedy that is otherwise available.

17 SEC. 4. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.